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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Butte)

CHRISTIAN GULBRANSEN, a Minor, etc.,

Plaintiff and Appellant,

v.

DEPARTMENT OF GENERAL SERVICES,

Defendant;

FAR NORTHERN REGIONAL CENTER,

Real Party in Interest and Respondent.

C074262

(Super. Ct. No. 157073)

Plaintiff Christian Gulbransen is a person with developmental disabilities and autism who has received services from Real Party in Interest Far Northern Regional Center (FNRC) since 1995. FNRC is a nonprofit corporation established pursuant to the Lanterman Developmental Disabilities Services Act, Welfare & Institutions Code section 4500 et seq., to “provide fixed points of contact in the community for persons with developmental disabilities and their families.” (Welf. & Inst. Code, § 4620, subd. (a).) Gulbransen, through his father as guardian ad litem, filed a petition for

peremptory writ of administrative mandate to modify and/or enforce a series of administrative decisions about the services provided to him by FNRC. (Code Civ. Proc., § 1094.5) The challenged decisions were issued by defendant Office of Administrative Hearings (OAH) of the California Department of General Services, but, as an impartial quasi-judicial tribunal, it was not a participant in the writ proceedings.

Gulbransen attached copies of four different OAH decisions to his writ petition, but he did not include or cite the administrative record on which they were based. The trial court waived filing fees, entitling Gulbransen to a free copy of the administrative record, which Gulbransen says contained over 6,800 pages. The trial court ordered Gulbransen to file an amended writ petition incorporating the administrative record, but ultimately denied the writ petition when Gulbransen declined to do so.

Gulbransen now contends (1) the documents he filed with his writ petition were sufficient to demonstrate his asserted errors of law; (2) the trial court abused its discretion in failing to order OAH or FNRC to file the administrative record; and (3) he is entitled to additional service funding.

We disagree with Gulbransen's first two contentions, and we decline to decide his third contention without an adequate record. We also deny his request for judicial notice filed on October 14, 2014, as the documents identified were not submitted to the trial court and are not dispositive of the contentions on appeal. We will affirm the judgment.

BACKGROUND

In the absence of an administrative record, we rely for the background on a 2012 administrative law decision attached to the writ petition.

“In June 2009, approximately four Requests for Fair Hearing with seventeen issues [raised by Gulbransen and his family] were consolidated for hearing. Administrative Law Judge Judith A. Kopec heard these matters and her decision issued on July 17, 2009.” Among other things, the decision required FNRC to continue paying for 629 hours per month of parent-vendored services. “Effective July 28, 2009,

Assembly Bill 9 (A.B. 9, Chapter 9, Statutes 2009), . . . amended sections of, and added new sections to the Lanterman Act. Because it ‘addresses the fiscal emergency declared by the Governor by proclamation of July 1, 2009,’ the act was declared an urgency statute and took effect immediately. Mandated changes were retroactive to July 1, 2009, or August 1, 2009, for consumers with existing services.” In October 2009, FNRC informed Gulbransen his parent-vendored services had been reduced to 172 hours per month. FNRC’s letter explained the legislatively-mandated budget reductions and statutory changes, then listed other reductions in funding applicable to Gulbransen, including the termination of travel expenses he had not justified by proof of extraordinary circumstances. Subsequent administrative decisions denied restoration of the funding Gulbransen demanded.

On June 13, 2012, citing Code of Civil Procedure section 1094.5, Gulbransen filed a petition for writ of administrative mandamus with the Butte County Superior Court alleging that “FNRC failed to comply with its statutory duty . . . by denying service funding for services and supports to which he was entitled and that FNRC was obligated by law to provide.” On July 17, 2012, Gulbransen filed an amended writ petition. He asked the trial court to void the modification of the 2009 administrative order allowing 629 hours per month of home services and to order 744 hours per month instead; he also sought an order to resume reimbursement for discontinued transportation services.

On July 18, 2012, the trial court granted Gulbransen’s request for a fee waiver, entitling Gulbransen to a free copy of the administrative record. Gulbransen requested the record on August 9. Several weeks later, counsel for FNRC asked Gulbransen’s counsel whether he intended to provide the court with a copy of the record and citations to it; Gulbransen responded that he had not received the record yet but one of the remedies he sought in his petition was to have a hearing after the administrative record had been prepared and filed with the court. On September 26, FNRC filed a response to the petition, saying the petition was so vague it could not determine which decisions were

being challenged. FNRC also asked that the petition be denied because the absence of a record and citations to the record made it “fatally defective.”

In October, Gulbransen filed his father’s declaration detailing some of the services provided by various agencies following the challenged administrative decisions and describing them as inadequate. A few weeks later, he filed more evidence about FNRC’s alleged failure to provide adequate services following the administrative decisions. But even after Gulbransen obtained a copy of the record, he declined to amend his petition to include citations to it.

At a hearing on January 7, 2013, the trial court ordered Gulbransen to “file an amended petition incorporating the . . . administrative record.” On January 25, with no amended petition having been filed, the parties appeared before the trial court again. Gulbransen argued it would be too burdensome to incorporate the lengthy record and insisted the trial court should resolve his concerns as questions of law. FNRC pointed out that the orders Gulbransen challenged were all based on disputed facts. The trial court asked how it could review the administrative decisions without presentation of, or citation to, the administrative record, and continued the hearing to March 15, 2013. At the March 15 hearing, the trial court observed that Gulbransen still had not provided a copy of the record and had proffered no other evidence. Accordingly, the trial court denied the petition for peremptory writ of mandate, discharged the alternative writ, and ordered Gulbransen to pay FNRC’s costs.

STANDARD OF REVIEW

This case involves Gulbransen’s fundamental vested rights. In a challenge to an administrative decision regarding fundamental vested rights pursuant to Code of Civil Procedure section 1094.5, a trial court must exercise its independent judgment in reviewing the facts and the law. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811-812.) That means a trial court must accord a strong presumption of correctness to the administrative findings but must make its own findings of fact and law. (*Id.* at pp. 817-

818.) In seeking to overturn the administrative decision, the complaining party has the burden of proof as well as the burden of producing evidence. (*Id.* at pp. 819-820.) The petitioner must convince the trial court the challenged administrative findings were contrary to the weight of the evidence. (*Id.* at p. 817.)

On appeal from a trial court's denial of a petition for writ of administrative mandate, an appellate court employs the substantial evidence standard. (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 824.) The appellate court must uphold the trial court's decision if its findings were supported by substantial evidence in the record. (*County of Alameda v. Board of Retirement* (1988) 46 Cal.3d 902, 910.) We review pure questions of law de novo. (*Cassidy v. California Board of Accountancy* (2013) 220 Cal.App.4th 620, 627.)

DISCUSSION

I

Gulbransen contends the documents he filed with his writ petition were sufficient to demonstrate his asserted errors of law.

The complete record in a case such as this “includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case.” (Gov. Code, § 11523) Gulbransen notes Code of Civil Procedure section 1094.5, subdivision (a) allowed him to file only part of the record with his writ petition, and that is what he did. But the statute also authorizes the trial court to order the filing of additional portions of the record. (*Ibid.*) In response to FNRC's argument that funding obligations particular to Gulbransen necessarily involved questions of fact, the trial court asked how it could engage in de novo review without a sufficient administrative record and gave Gulbransen two months to address that concern. The trial court ordered Gulbransen to file an amended petition

incorporating the administrative record, but Gulbransen did not do so. The trial court determined the partial record filed by Gulbransen was inadequate.

We have reviewed the documents filed by Gulbransen in this case, and we agree the record is inadequate. His amended petition asserted 29 errors. Only nine of the allegations cited exhibits, which were attached to the original petition but not the amended petition. Some of the asserted errors alleged facts but did not provide citations to evidence. For example, paragraph 71 of the amended petition alleged that “Petitioner did not have an IPP team meeting after ALJ Kopec’s decision on July 17, 2009, until December 2009 and that meeting was not completed until October 2010.” And paragraph 74 alleged “FNRC had not identified, offered established [*sic*] the availability of specific alternatives to Petitioner, including travel to Dr. Meier and travel to treating physicians who might provide services comparable to Dr. Gupta and Dr. Kartzinell.” The administrative decision attached as Exhibit 1 to the original petition was based on 129 factual findings; the decision attached as Exhibit 2 was based on 124 findings; and the decision attached as Exhibit 4 was based on 78 factual findings. Under the circumstances, the documents Gulbransen filed with the petition were not sufficient to address his asserted errors.

II

Gulbransen next contends the trial court abused its discretion in failing to order OAH or FNRC to file the administrative record.

Gulbransen initiated this action and he had the burden of proof. (*Fukuda v. City of Angels, supra*, 20 Cal.4th at pp. 816-817.) He cites *Austin v. Valverde* (2012) 211 Cal.App.4th 546 for the proposition that it was not his obligation to file the record because he is indigent. But that case merely held that an administrative agency must provide a copy of the record to an indigent petitioner; it did not absolve indigent petitioners of the obligation to provide a sufficient record to the court to meet their burden. (*Id.* at p. 556.) If a petitioner challenging an administrative decision does not

provide citations to the administrative record, the reviewing court may decline to consider the challenge. (*Advanced Choices, Inc. v. Department of Health Services* (2010) 182 Cal.App.4th 1661, 1671.)

Gulbransen also cites cases in which trial courts abused their discretion by failing to consider the facts before them. But here the trial court was not obligated to consider partial evidence or facts out of context. It did not abuse its discretion in requesting a more complete record to properly consider the claimed errors.

III

Gulbransen further claims he is entitled to additional service funding. He argues such a determination does not require us to consider factual questions, but the limited record indicates otherwise. We decline to address his contention without an adequate record.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, J.

We concur:

/S/
ROBIE, Acting P. J.

/S/
HOCH, J.